IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ANITA JACK and ADOLF JACK, Individually and as Representatives of the ESTATE OF SHEENA JACK, DECEASED	§ § § §	
VS.	§ §	
DENTON STATE SUPPORTED LIVING CENTER f/k/a DENTON STATE SCHOOL, and TEXAS DEPARTMENT OF AGING AND DISABIITY SERVICES,	§ § § §	**CIVIL ACTION NO ________________**

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COME ANITA JACK AND ADOLF JACK, Individually and as Representatives of the Estate of Sheena Jack, Deceased, and file this Original Complaint against Defendants, Denton State Supported Living Center (DSSLC), f/k/a Denton State School and the Texas Department of Aging and Disability Services (DADS). In support of this complaint, the Plaintiffs would respectfully show the Court and jury as follows:

JURY DEMAND

1. Plaintiffs hereby demand a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

PLAINTIFFS

2. Plaintiffs Anita Jack and Adolf Jack are residents of Tarrant County, Texas. They are the surviving parents of Sheena Jack, Deceased, and are the sole heirs of Sheena Jack, Deceased.

A. WRONGFUL DEATH

3. Plaintiffs are entitled to and bring this action pursuant to Title 4, Chapter 71, Subchapter A of the Texas Civil Practice and Remedies Code - Texas' Wrongful Death Statute. Defendants are liable to Plaintiffs for the actual damages arising from the injury which caused Sheena Jack's death because such injury was caused by Defendants' or its agents' or servants' wrongful acts, neglect, carelessness, unskillfulness, or default, as set forth below, and the decedent would have been entitled to bring an action for such injury had she lived.

B. SURVIVAL

4. In addition, Plaintiffs are the heirs and representatives of the Estate of Sheena Jack, Deceased. No administration of such estate is pending and none is necessary. Plaintiffs are entitled to and do bring this action in such representative capacity pursuant to Title 4, Chapter 71, Subchapter B of the Texas Civil Practice and Remedies Code - Texas' Survival statute. Plaintiffs assert against Defendants all causes of action for personal injury to the health and person of Sheena Jack caused by Defendants' or their agents' or servants' wrongful acts, neglect, carelessness, unskillfulness, or default, as set forth below.

DEFENDANTS

5. Defendant Denton State Supported Living Center f/k/a Denton State School, hereinafter referred to as "DSSLC", is a governmental entity existing under the laws of the State of Texas and is located in Denton County, Texas. This Defendant operates under the auspices of the Texas Department of Aging and Disability Services. Service of

process may be issued registered agent, Tammy Harbin at 200 Soapberry Circle, Irving, Texas 75063.

6. Defendant Texas Department of Aging and Disability Services, hereinafter referred to as "DADS", is a governmental agency existing under the laws of the State of Texas. Services of process may be served by delivering a copy of this Complaint to its Commissioner, Chris Traylor at 701 W. 51st Street, Austin, Texas 78751.

JURISDICTION AND VENUE

7. This action arises under the United States Constitution, the laws of the United States, and the laws of the State of Texas. This action involves matters of Federal Question and civil rights. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1343.

8. Venue is proper pursuant to 28 U.S.C. §1391(b) because jurisdiction is not based on diversity of citizenship and the Eastern District of Texas is the judicial district where one or all of the Defendants reside. A substantial part of the evens and omissions giving rise to this claim occurred within the Eastern District of Texas.

FACTS

9. This action is based on the neglect and wrongful death of Sheena Jack, a mentally incapacitated adult, who was a resident of DSSLC from April 10, 2008 until her death on June 29, 2009. Sheena died in her room on the morning of June 29, 2009. During the two day period prior to her death, Sheena had exhibited serious symptoms and complaints and had asked staff members to take her to a hospital. Her request was refused. The following day, June 28, Sheena's symptoms persisted and worsened. At various times throughout the day, Ms. Jack begged staff members to call 9-1-1 or contact her father so

he could take her to the hospital. These requests were likewise ignored. Sheena was found dead the following morning.

PRE-SUIT NOTICE AND CONDITIONS PRECEDENT

10. Pursuant to Fed. R. Civ. P. 9(c), all conditions precedent have occurred or been performed. More than 60 days prior to the filing of this lawsuit, Plaintiffs notified Defendant of the claims asserted herein by certified letter dated November 23, 2010. Plaintiffs have complied with all the provisions of Tex.Civ.Prac.&Rem.Code Ch. 74, whether or not such is required herein.

NEGLIGENCE

11. On the occasion in question, Defendants failed to exercise that degree of care that an ordinarily prudent person or institution would have exercised under the same or similar circumstances. Defendants violated their applicable standards of care, breached the legal duties which Defendants owed to Plaintiff, and where negligent. Such negligence directly, foreseeably, and proximately caused damages, including injury to and death of Sheena Jack and the damages sought by Plaintiffs herein.

12. In additional Defendant DADS was negligent in the supervision, monitoring and enforcement of Defendant DSSLC in its case of Medicare and/or Medicaid patients. . Such negligence directly, foreseeably, and proximately caused damages, including injury to and death of Sheena Jack and the damages sought by Plaintiffs herein.

WAIVER OF IMMUNITY

13. The concepts of governmental immunity and official immunity provided under the laws of the State of Texas do not apply in this matter because Plaintiffs' claims are alleged under the Due Process Clause of the 14th Amendment of the United States

Constitution and 42 U.S.C. §1983. Specifically, Defendants DSSLC and DADS in their official capacities acted with callous and deliberate indifference to the right of Plaintiffs. Plaintiffs' rights were violated as a direct and proximate result of the implementation and practice of policies and/or customs employed by Defendants DSSLC and DADS in their official capacities.

GROSS NEGLIGENCE

14. When viewed objectively from the standpoint of Defendants at the time, the negligent conduct described herein involved an extreme degree of risk considering the probability and magnitude of the potential harm, and Defendants had actual, subjective awareness of such risk, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of Elizabeth Taylor and her family. Defendants' negligence in such regard was gross negligence. Accordingly, Plaintiffs are entitled to recover punitive/exemplary damages in a substantial amount in order to punish such conduct, and to deter similar conduct in the future.

DAMAGES

15. As a direct, foreseeable, and proximate result of the occurrence and the negligence, recklessness, gross negligence of Defendants, Sheena Jack sustained severe injuries and died and Plaintiffs sustained injuries and have suffered, and will continue to suffer, damages. The damages of SHEENA JACK and Plaintiffs include:

a. physical pain and mental anguish in the past;

b. mental anguish which in reasonable probability will be suffered in the future;

c. reasonable and necessary medical expenses;

d. burial and funeral expenses;

e. medical and/or psychiatric expenses which in reasonably probability will be incurred in the future;

f. loss of consortium, society, and companionship, past and future; and

g. lost care, comfort, advice, counsel, guidance, & household services, past and future.

16. Plaintiffs should be awarded an amount substantially in excess of the minimum jurisdictional limits of this Court as a fair and reasonable compensation for their injuries and damages and the injuries and damages sustained by Sheena Jack.

EXEMPLARY DAMAGES

17. Because the negligence and breaches of Defendants, as set forth above, constituted gross negligence Plaintiffs are entitled to recover punitive damages in a substantial amount, in order to punish such conduct and deter similar conduct in the future.

PRE-JUDGMENT INTEREST

To the Court Only:

18. Plaintiffs are entitled to an award of pre-judgment interest as a matter of law upon such terms, conditions, and rates as allowed by law, for which Plaintiffs sue.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that Plaintiffs have judgment against such Defendants, jointly and severally, as follows:

a. That Plaintiffs recover judgment from Defendants, jointly and severally, for their damages described above, in a total sum in excess of the minimal jurisdictional limits of the Court;

b. That Plaintiffs recover exemplary damages in a fair and reasonable sum in an amount in excess of the minimal jurisdictional limits of this Court;

c. That Plaintiffs recover pre-judgment interest as allowed by law;

d. That Plaintiffs recover post-judgment interest on the total due amounts at the highest legal rate from the date of judgment until paid; and

e. That Plaintiffs recover such other and further relief at law and in equity to which Plaintiff may be shown to be justly entitled.

Respectfully submitted,

_/s/____________________________

J. Mark Sudderth
State Bar No. 19461500

NOTEBOOM - THE LAW FIRM
669 Airport Freeway
Hurst, Texas 76053
817/282-9700
817/282-8073 FAX
Attorneys for Plaintiff